

**R.D. # 05 -10
South Kearny, NJ**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

KEPHART TRUCKING CO., INC.¹

Employer

and

CASE 22-RC-13102

**TEAMSTERS LOCAL 125,
a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS²**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, Teamsters Local 125, a/w International Brotherhood of Teamsters, filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 50 employees consisting of all regular full-time and part-time drivers employed by the Employer, Kephart Trucking Co., Inc., at its South Kearny, New Jersey location. The Employer contends that the scope of the unit sought by Petitioner is inappropriate. Rather, it claims that only a multi-location unit consisting of the approximately 150 drivers employed at its four locations in South Kearny, New

¹ The name of the Employer appears as amended at the hearing.

² The name of the Union appears as amended at the hearing.

Jersey, Delaware, New Jersey, Queens, New York and Bigler, Pennsylvania is appropriate.

I have considered the evidence and the arguments presented by the parties. I find, for the reasons discussed *infra*, that the petitioned-for unit is an appropriate unit in scope and will order an election therein.

Under Section 3(b) of the Act, I have authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,³ I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed;
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein;⁴
3. The labor organization involved claims to represent certain employees of the Employer;⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act;⁶
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

³ Briefs filed by the parties have been duly considered.

⁴ The parties stipulated, and I find, that the Employer is a Pennsylvania corporation engaged in the interstate transportation and freight management of waste at various locations, including South Kearny, New Jersey. During the preceding 12 months, the Employer has purchased and received goods and materials valued in excess of \$50,000 from suppliers located outside the State of New Jersey.

⁵ The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁶ The record reveals that there is no history of collective bargaining for the sought after employees and no contract or other bars to an election in this matter.

All regular full time and part time drivers employed by the Employer at its South Kearny, New Jersey facility, excluding temporary employees, dispatchers, warehouse employees, mechanics, sales employees, office clerical employees, managers, guards and supervisors, as defined in the Act, and all other employees.

I. STATEMENT OF FACTS

The Employer is engaged in the transportation and freight management of waste at various locations throughout the northeast region of the United States and Texas. Besides having facilities in Texas and New Hampshire, it also has facilities in South Kearny, New Jersey, Delaware, New Jersey, Queens, New York and Bigler, Pennsylvania, where it is headquartered. The record reflects that the South Kearny facility is about 40 miles from the Delaware facility, 20 miles from the Queens facility and 260 miles from the Bigler facility.

The drivers who work out of each of the Employer's facilities have the same type of skills and generally perform the same type of work. All drivers, except for some "over the road" drivers who work out of Bigler, report daily to their respective assigned facilities where they pick up waste hauling vehicles. They will then drive to transfer stations operated by the Employer's customers, from where they will obtain solid waste, which they haul to landfills. The drivers return to their assigned facilities at the end of their shifts. Most drivers work during the day but some drivers work at night.

Employees are not transferred between any of the facilities on a regular basis. David Kephart, the Employer's Vice President, testified that within the six-month period before the hearing, no employees had transferred between the facilities discussed herein. He also testified that when tractor equipment was moved from Bigler to South Kearny,

about 20 Bigler drivers were offered transfers to South Kearny, but none of them accepted the offer. As a result, about 12 Bigler drivers were laid off and about eight such drivers were given other work. The Employer was then required to hire new drivers in South Kearny to operate the equipment.

The record reflects that the Employer's Vice President, David Kephart, or his brother, who is not identified but apparently is another member of Bigler management, visit the South Kearny facility, on average, about once a week. There is no evidence as to what they do during their visit or whether they have any contact with the drivers there. Further, there is no evidence of any other regular visits by Bigler management to the site.

Working at the South Kearny facility on a daily basis are one terminal manager and two driver managers. The Delaware and Bigler facilities also have their own driver managers who are there daily. These managers are the Employer's on-site supervisors. They speak to the drivers directly, give them their work assignments, collect information and pass information back and forth to other management at Bigler. Drivers are to maintain communication with the Employer through their on-site supervisors for any matters relating to their driving activity. They will go to their supervisors if they have complaints, even if the complaints can only be resolved through communications that their supervisor has with Bigler. If a driver calls in sick, or they want the day off, they are to notify their on-site supervisor. In Queens, where the Employer rents space at the terminal of Waste Management, one of its customers, there is no on-site terminal or driver manager. The drivers there do not have any on-site supervision but, instead, receive direction and supervision via cell phone directly from supervisors at Bigler. The approximately six or seven drivers who work nights at South Kearny, when there is no

on-site supervisor present, also call Bigler for supervision. That practice applies to drivers who work nights at all of Bigler's other facilities, when no on-site supervisor is present.

The facilities also have mechanics that perform preventive maintenance work at their respective sites, except for the Queens facility, which uses an outside vendor to perform vehicle maintenance work or, on occasion, a mechanic from South Kearny. If a truck breaks down on the road, the driver will call Bigler to report the occurrence, and a representative there will advise the driver what to do. Either the representative will then call the driver's on-site supervisor to report the occurrence, or the driver will do so.

The record reflects that the driver's work assignments are determined by personnel employed at the Employer's main office at Bigler. Thus, the Employer's customers submit requests for service to Bigler based on their expected incoming volume of waste. The allocation of resources from each facility, in order to cover the customers' needs, and the specific daily driver routes to meet the demand, is determined there. Bigler personnel then communicate this information to on-site supervisors, who are in direct control at each of the facilities, including South Kearny. The on-site supervisors will then then pass the information directly on to the drivers. If there is an unusually high demand for resources in one area, drivers from another facility may be routed there by Bigler to cover some of that work. The drivers will not, however, be assigned to report to the overburdened facility.

Wages, hours and benefits received by the Employer's employees at its various facilities, including health insurance, retirement plan, 401(k) savings plan and paid leave

are also determined at Bigler, and are uniform. Personnel records are also maintained centrally at Bigler for all of the Employer's employees.

With respect to the hiring of employees, the record reveals that the Employer may advertise for driver job openings at specific locations, or generally, and applicants are asked to contact Bigler. Prospective drivers may show up at the local terminals and speak to the terminal managers about job openings. However, all job applications are transmitted to Bigler, where they are evaluated. Interviews for drivers applying for positions at the various facilities, including South Kearny, are conducted on the phone, from Bigler.

The record reflects that managers at South Kearny can recommend disciplinary action, including termination, for drivers. However, disciplinary decisions are made in Bigler. It appears, though, that the recommendations made by the managers are taken seriously and they are adopted, if supported by objective considerations. For the most part, the personnel at Bigler will not speak to the drivers to get their version, and will rely on the facts provided by the terminal management. The on-site supervisors will be the Employer representatives who notify the employees of any discipline that is to be meted out to them.

Employees receive orientation at their assigned facility, except that on some occasions, when several new drivers are hired at about the same time at nearby facilities, the training may take place together at the facility where the majority of the new employees will be working. Scheduled safety training is also done at the drivers' assigned facilities, and they are not required to go to other facilities for such training.

With respect to the geographic proximity of South Kearny to the Employer's other Northeast facilities, as noted above, the South Kearny facility is about 260 miles from the Bigler facility, while it is about 40 miles from Delaware and about 20 miles from Queens. David Kephart testified that the typical tour of duty in the trucking business is between 60 and 620 miles roundtrip per day. The record reflects that the six or seven night drivers at South Kearny sometimes go to landfills north or west of Bigler, although they do not report to the Bigler facility and there is no evidence that they come into contact with any drivers from Bigler when they do so.

II. ANALYSIS

In determining an appropriate bargaining unit, the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining and advancing industrial peace and stability. It is well settled that the Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *American Hosp. Ass'n. v. NLRB*, 499 U.S. 606, 610 (1991); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1998); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Board also has broad discretion in this area, reflecting Congress' recognition of the need for flexibility in shaping the bargaining unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. Generally, the Board attempts to select a unit that is the smallest appropriate unit encompassing petitioned-for employee classifications. *Bartlett Collins Co.*, 334 NLRB 484 (2001).

As noted above, the Petitioner has requested a unit composed of all regular full time and part time drivers employed by the Employer at its South Kearny, New Jersey facility. The Respondent argues that the only appropriate unit is all drivers employed by it at its four Northeast United States facilities, namely, in Kearny, New Jersey, Delaware, New Jersey, Queens, New York and Bigler, Pennsylvania. The unit sought by a petitioning labor organization is a relevant consideration in determining the scope of a bargaining unit, and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to the unit requested does not exist. *Overnite Transportation Company*, 322 NLRB 732 (1996). Though an employer may seek a broader unit and that unit may be appropriate, it does not necessarily render the petitioner's unit inappropriate. *Overnite Transportation Company, supra*.

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *Dattco, Inc.*, 324 NLRB 323 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). To overcome the presumption, the challenging party has to show "functional integration so substantial as to negate the separate identity of a single facility unit." *J&L Plate*, 310 NLRB 429 (1993); *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993). See also: *Hegins Corp.*, 255 NLRB 160 (1981); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Belle Mills*, 139 NLRB 629 (1962). The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; degree of centralized versus local control over daily operations and labor relations; similarities in wages, benefits and working conditions and

the differences, if any, in the skills and functions of employees. *Marine Spill Response Corp.*, 348 NLRB 1282 (2006) (quoting *Budget Rent a Car Systems, Inc.*, 337 NLRB 379 (2002)); *Clarion Health Partners, Inc.*, 344 NLRB 332 (2005); *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004); *Trane, an Operating Unit of American Standard Companies*, 339 NLRB 866 (2003). These factors must be weighed in resolving the unit contentions of the parties. The heavy burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB at 429. Even if there are some factors supporting a multilocation unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.*, 151 NLRB 383, 384 (1965).

Based upon the record as a whole, and for the reasons described below, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit.

The record revealed no bargaining history at any of the Employer's locations. Additionally, the record revealed no differences in wages, benefits, working conditions, skills or functions amongst any of the drivers at issue.

With respect to the issue of the extent of employee interchange and contact, the record did not reveal any substantial employee interchange between the drivers at South Kearny and the drivers at the Employer's other Northeast facilities. Thus, there is no evidence that drivers are transferred between the facilities. Further, any contact or interaction among drivers from different facilities appears to only occur at some orientations, if and when it is more efficient to provide joint orientation to drivers hired at about the same time. It is well established that minimal employee interchange and lack

of meaningful contact between employees at different facilities diminishes the significance of the functional integration and distance between the facilities. *J & L Plate*, 310 NLRB 429 (1993). The party opposing the single facility presumption has the burden of presenting sufficient evidence to rebut that presumption and must establish the context and percentage of interchange among the total number of employees. See, *New Britain Transportation*, 330 NLRB 397 (1999). In the instant matter, the Employer was unable to provide any evidence of significant employee interchange and consequently, it did not meet its burden.

With respect to the geographical proximity of the various facilities, I find that this factor also does not support the Employer's assertion that a multi-location unit is appropriate. In this regard, I note that the South Kearny facility is a considerable distance of about 260 miles from the Bigler facility, and also about 20 miles from the nearest facility in Queens. While geographic separation is not necessarily conclusive, it is a strong indicator whether a single location unit is appropriate. *Dixie Bille Mills*, supra, *Van Lear Equipment, Inc.*, 336 NLRB 1059 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single bus terminal location to be appropriate where the other terminals were between 3 and 21 miles apart. See also, *New Britain Transportation*, 330 NLRB 397 (1999) (separation of 6 to 12 miles).

Clearly, the record reveals evidence of standardized and centralized control of labor and employment policies, procedures and benefits. However, the Board has found that the existence of centralized administration and control was not inconsistent with finding sufficient local autonomy to warrant a single location. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *L'Eggs Products, Inc.*, 236 NLRB 354

(1978). Local autonomy of operations will militate toward a separate unit. *Angelus Furniture Mfg. Co.*, 192 NLRB 992 (1971).

Respondent contends that the Employer maintains all control over the daily operations from its Bigler facility. However, with the exception of the Queens facility, there appears to be a degree of local autonomy at each of the Employer's other facilities, each of which has their own on-site supervision. In this regard, except for a relatively small number of night drivers, the on-site supervisors have face-to-face contact with the drivers, who report to their facilities in the beginning and end of their shifts each day, and they give them their work assignments. The drivers communicate with the on-site supervisors at their facility concerning all matters relating to their driving. Further, if they are out sick or want a particular day off, they notify their on-site supervisor. Additionally, it appears that the on-site supervisors can effectively recommend driver discipline. As the Employer's representatives, they insure that the Employer's policies, determined in Bigler, are carried out by the drivers.

In *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988), a single facility unit was found to be appropriate and to have sufficient local autonomy where a local manager conducted initial screening for new hires and was consulted on major disciplinary issues. In our case, the local managers may meet with job applicants who show up at their facility and they also appear to be able to effectively recommend disciplinary action for drivers. Also, in *Esco Corp.*, 298 NLRB 837 (1990), the Board found a single-facility unit to be appropriate and to have sufficient local autonomy, even when there was no statutory supervision at one of the facilities, and a leadman oversaw the operations there.

The Employer cites *Trane*, 339 NLRB 866 (2003), *R & D Trucking, Inc.*, 327 NLRB 531 (1999) and *Mavis Tires Supply Corp.*, 2004 NLRB LEXIS 471 (2004) in support of its assertion that only a multi-location unit is appropriate. However, I find that all of these cases are distinguishable. In *Trane*, the Board found a single facility unit of heating, ventilating and air-conditioning (HVAC) technicians assigned to a particular facility not to be an appropriate unit and that the appropriate unit had to also include such technicians assigned to a different facility. In so finding, the Board noted, among other things, that there was substantial employee interchange and transfer between the facilities, despite their geographic distance (108 miles) from each other. It also noted that the employees did not have separate supervision or other oversight and were commonly supervised by the same operations manager. They were also dispatched by the same dispatcher, who dispatched all technicians. Further, employees from the two sites were primarily dispatched from their homes and they did not have to report to their assigned facility each day. Additionally, there was evidence that the employees from the two facilities sometimes worked together on jobs. Those factors, which were relied on by the Board, are not present in the instant case.

In *R & D Trucking, Inc.*, the Board also found that the employer therein had rebutted the single-facility presumption and that the smallest appropriate unit had to include employees stationed at a different facility. In so finding, the Board relied, among other things, on evidence of regular and substantial employee interchange between the facilities, which were only about three miles apart, and common supervision of employees by the employer's president. Again, those factors also are not present in this case.

In *Mavis Tires Supply Corp.*, the Regional Director also concluded that the Employer had successfully rebutted the single-facility presumption. However, in her Decision, the Regional Director relied on the fact that 1) members of headquarters management spent a considerable amount of time at the Employer's retail locations; 2) store management relayed only factual information regarding disciplinary infractions; and 3) there was considerable evidence of interchange between the Employer's facilities. In the instant case, there is no evidence to suggest that any of these factors are present.

Accordingly, I conclude that, based on the record as a whole, the drivers at the South Kearny facility have a group identity separate and apart from the larger group of the Employer's drivers at its other facilities. In that regard, I note the fact that, unlike other drivers, they begin their routes from, and return to, the South Kearny facility daily, they report to their own on-site managers, they do not interchange with the drivers at the other facilities and have limited contact with them. I find that those factors outweigh the centralization of functions and commonality of skills, wages and benefits, and are significant factors establishing the appropriateness of a single facility unit. I do not find that there is functional integration so substantial as to require an overall unit of drivers. The considerable lack of geographic proximity between the facilities, especially between South Kearny and Bigler, also militate against a finding that only a multi facility unit is appropriate. I also note that the Board has held that a union's position as to the unit is always a relevant consideration, albeit not a determinative one. *Mark's Oxygen Co.*, 147 NLRB 228 (1964); *Airco Inc.*, 273 NLRB 348 (1984). In this regard, noting the Petitioner's desire as to the unit is consistent with the factual and legal analyses described

above, and based upon the record as a whole, I find the Petitioner's proposed unit to be appropriate in scope and will order an election therein.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacement, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local 125, a/w International Brotherhood of Teamsters.**

IV. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **June 9, 2010**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **June 16, 2010**. The request

may be filed electronically through E-Gov on the agency's website, www.nlr.gov, but may not be filed by facsimile⁷.

Signed at Newark, New Jersey this 2nd day of June, 2010.

/s/ J. Michael Lightner
J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place – 5th Floor
Newark, New Jersey 07102

⁷ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.